

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.S., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

S.P.,

Defendant and Appellant.

E071826

(Super.Ct.No. JUV089357)

OPINION

APPEAL from the Superior Court of Riverside County. Walter H. Kubelun,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and
Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and
Prabhath Shettigar, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency matter regarding E.S., the juvenile court terminated parental rights and selected adoption as the permanent plan pursuant to Welfare and Institutions Code section 366.26.¹ Defendant and appellant S.P. (mother) contends the court abused its discretion in denying her section 388 petition requesting reinstatement of reunification services. She further challenges the court's refusal to apply the beneficial parent-child relationship exception to termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).) We conclude mother failed to carry her burden of proving changed circumstances to support her section 388 petition, and the evidence fails to show mother's relationship with E.S. had reached the level at which the exception would apply. We therefore affirm the court's orders.

I. PROCEDURAL BACKGROUND AND FACTS

A. *Family History.*

In September 2016, the Riverside County Department of Public Social Services (department) investigated a referral regarding allegations of general neglect; however, mother made arrangements for E.S. (born 2007) to stay with the maternal grandparents (grandparents), and the referral was closed as inconclusive. Mother had an extensive history of substance abuse requiring intervention from child protective services dating back to 1996. She was offered court-ordered services, including parenting classes, counseling, and substance abuse treatment regarding her older children.

¹ All further statutory references are to the Welfare and Institutions Code.

B. Detention Hearing.

On December 6, 2016, the department received a referral with allegations of general neglect and physical abuse of E.S. E.S. was living with her grandparents and visiting mother one to two times a month. Mother was living in a residence owned by the grandparents, even though the utilities had been turned off, and she allowed 10 to 12 people to live with her. These people “appeared to look under the influence of [a] substance due to rapid speech, rapid body movement, and looking through random items within the mother’s property.” E.S. reported witnessing domestic violence between mother and her boyfriend. The department was unable to contact mother. Although E.S. was living with her grandparents, by January 2017, they informed the social worker they could no longer “do this anymore” because of E.S.’s “violent and disruptive behavior.”

On January 6, 2017, the department filed a dependency petition under section 300 subdivisions (b) (failure to protect) and (g) (no provision for support) alleging:

(1) mother abused controlled substances, which limited her ability to adequately parent and provide for the child’s needs; (2) mother had a history of engaging in acts of domestic violence; (3) mother neglected the welfare and safety of the child, and she exposed the child to people abusing controlled substances, living in her home; (4) the home was in disarray, cluttered, lacked running water, and the front yard was covered with debris; (5) mother failed to ensure the child’s medical and educational needs were being met, i.e., the child had missed 28 days of school, had been tardy 24 times, and there was concern about the child’s personal hygiene; and (6) mother had a criminal history, including assault with a weapon likely to produce great bodily injury and battery. As to

father, the petition alleged he was not a member of E.S.'s household, had failed to provide for her, and his whereabouts were unknown.²

On January 9, 2017, the juvenile court found prima facie evidence to remove E.S. and ordered supervised visitation for mother.

C. Jurisdiction and Disposition Hearing.

According to the jurisdiction/disposition report filed February 3, 2017, mother had yet to respond to the department's attempts to contact her. E.S. reported she felt "comfortable and safe" in her foster placement. Regarding the allegations in the petition, E.S. said she shared her bedroom at mother's home with two adults, and one of them smoked from "pipe thingies"; she witnessed domestic violence between mother and mother's boyfriend, causing her to fear someone might die; and when E.S. would get in trouble, mother would hit her. E.S. opined that mother needed help with "drinking, alcohol and drugs," but E.S. missed mother and wanted to talk to her. On February 7, 2017, E.S. was placed with her maternal first cousin, K.U., a licensed foster care provider.

In the addendum report filed March 9, 2017, the social worker stated she had interviewed mother, and mother "appeared not to be fully coherent as evidenced by her slurred speech, inability to follow through on her thoughts, and her closing her eyes off and on while attempting to speak." Mother admitted to a history of drug use, but she denied the allegation of her current drug use or domestic violence and refused to drug

² The child's biological father is not involved in her life and is not a party in this appeal.

test. She denied the claim that other people were living with her and asserted she had paid to have the utilities turned on. Mother claimed she was employed as a top producer at a marketing company; however, she currently was not working because she did not have a car. Mother blamed grandparents for E.S. missing school and having poor hygiene. Mother was not willing to participate in an inpatient substance abuse treatment program, but she “would be willing to consider an out-patient” program, as well as parenting services and counseling.

From February 8 until March 7, 2017, mother failed to respond to the department’s attempts to contact her, other than leaving a voicemail message indicating she was unable to obtain a cell phone. On March 7, K.U. reported E.S. had been “progressing well in her placement” without any “major behavioral issues.” E.S. was participating in a group counseling program at her school and was set to begin individual counseling with the school counselor. Despite the department’s four certified letters to mother to coordinate services and visitation, she had not made herself available.

At the contested jurisdiction/disposition hearing on March 14, 2017, the juvenile court sustained the allegations in the petition, with the exception of the allegation concerning mother’s criminal history, adjudged E.S. a dependent of the court, continued her placement with K.U., and ordered reunification services and visitation for mother.

D. Six-month Review Report and Hearing.

In the six-month status review report filed September 1, 2017, the department continued to recommend supervised visitation and reunification services for mother. Because K.U.’s home study failed to pass the Kern County adoption assessment, the

department requested authorization to study a possible placement with E.S.'s half sibling in Illinois. The placement was subsequently denied as to the half sibling due to her "lack of communication and non-compliance." E.S. stated she did not want to be adopted until mother "no longer ha[d] services."

In August 2017, the social worker met with mother. Mother said she had been living with a friend, but she "did not know the full address," and she was in a relationship but refused to disclose the person's name and details. Mother was earning money by collecting recyclable cans and bottles and repairing headlights. She had not enrolled in a drug treatment program, complied with the drug testing component of her case plan, or started individual counseling.

Mother's recent visit with E.S. had gone well, except for mother asking E.S. to bring her snacks and food during the visit. E.S. was doing well physically, socially, and academically (her grades were "mostly A's"). She had been diagnosed with "Adjustment Disorder and Depression" and sometimes exhibited behavioral and emotional problems, such as running around the caregiver's house when she did not get what she wanted. Nevertheless, E.S.'s behavior had improved significantly with the mental health services she had been receiving weekly since July 2017.

At the six-month review hearing on September 14, 2017, the juvenile court continued reunification services and supervised visitation.

E. Twelve-month Review Report and Hearing.

In the 12-month status review report filed February 28, 2018, the department recommended termination of reunification services for mother and reduced supervised

visitation to once a month. It also requested authorization to study a possible placement with E.S.'s maternal uncle in Washington. However, there was a "possibility his home would not pass," so the study "was not pursued."

In January 2018, mother was living in a homeless camp and had not made any progress on her service plan. In March 2018, she entered a 90-day residential program to address her substance abuse problem. Regarding visitation, mother had not engaged in consistent monthly visits until December 29, 2017. E.S. was healthy and developmentally on target, doing well in school, progressing "extremely well" in her weekly mental health services, and had met her therapy goals.

On April 13, 2018, at the contested 12-month review hearing, the juvenile court terminated mother's reunification services and set a section 366.26 hearing. The court assigned educational rights to K.U. and ordered supervised visitation with mother for two hours, once a month.

On August 2, 2018, the department filed a request to continue the section 366.26 hearing for 120 days to conduct another adoptive home study for K.U. The department referred to K.U. as a "Non-Related-Extended Family-Member."³ K.U. was hoping she would receive an approved adoption assessment because she had mitigated the concerns that led to the denial of her first assessment. The department stopped pursuing out-of-state placement for E.S., and E.S. preferred to stay with K.U., through guardianship or adoption. E.S. continued to do well physically, developmentally, and academically. She

³ K.U. is E.S.'s biological cousin; however, K.U. was adopted as a child, which legally makes her a nonrelative.

engaged in monthly visits with mother; however, after a July 2018 visit, E.S. became upset when mother told her she would be returning to her (mother's) care. K.U. reported that after visits with mother, E.S. "became angry and started kicking things." E.S. said she would like to continue visiting mother if the visits were supervised. E.S.'s therapist reported E.S. was "regressing in her behavior," requiring a referral to "Therapeutic Behavioral Services." Mother remained in contact with the department; however, she was homeless and making little income with recycling and repairing headlights. She left the 90-day residential substance abuse program on May 3, 2018 and, although her services had been terminated in April 2018, she enrolled in an outpatient program.

F. Section 388 Petition.

On November 7, 2018, mother filed a section 388 petition seeking reunification services. She stated she had "completed an intense substance abuse program, which included counseling and services needed to rehabilitate herself, placing her in the position to reunify with [E.S.] She ha[d] family support to assist in the care of her daughter while she work[ed] and [was] prepared to take over [a] parental role for [E.S.]" Mother claimed a strong bond with E.S. and argued she would "be with family and extended family instead of being in a home that has no familial relationships." Mother provided proof that she had received 20 negative drug tests, had attended all of the required 12-step meetings and three group meetings each week, and had stable housing.

On November 8, 2018, the juvenile court ordered a hearing on mother's section 388 petition.

In the addendum report filed November 19, 2018, the department stated E.S. had developed a “close attachment” to her foster mother and foster siblings. E.S. turned to her foster family for comfort and guidance. K.U. had received preliminary adoption assessment approval, which stated E.S.’s “body language and non-verbal communication express feelings of safety, a bond with others, and contentment. It is clear that she loves all members of the home.” K.U.’s children fully accepted E.S. and wanted her to be a member of their family. K.U. had seen an improvement in E.S.’s behavior. She wanted to ensure it continued and to give E.S. permanency and stability.

The department opposed mother’s section 388 petition, arguing it was too early in her recovery given her substance abuse history, which dated back to 1996, and her failure to make any progress while receiving reunification services. It expressed concern about mother’s friends and called into question her support system. It pointed out that her live-in boyfriend was only four months sober and had a criminal history, which included possession of controlled substances. The department acknowledged the parent-child bond, which K.U. was open to continuing if mother was sober, and noted that placing E.S. with K.U. meant the child would be with her biological family.

G. Sections 388 and 366.26 Hearing.

On December 14, 2018, at the hearing on mother’s section 388 petition, the following evidence was presented by mother: (1) she had been seasonally employed as a bell ringer for the Salvation Army and testified her supervisor would be recommending her for full-time employment; (2) she had completed an inpatient program; (3) she had been sober for nine months; (4) she was attending aftercare treatment every other

Wednesday, as well as Alcohol Anonymous and Narcotics Anonymous meetings; (5) she had been staying in the grandfather's mobile home and saving money so she and E.S. could move into a sober living home; and (6) she had signed an agreement to pay \$525 a month to live at a sober living home. Mother also testified she had been visiting E.S. every month for two hours and spoke to her on the telephone weekly. During visits, the two played games, E.S. would sit on mother's lap, and they hugged. Mother believed she had a parental bond with E.S.

Regarding the changed circumstances, mother testified she had changed everything in her life completely; she no longer associated with her old friends or those with "a past or criminal" history. However, on cross-examination, she admitted to living at both grandfather's mobile home and a homeless camp after leaving the inpatient program. She explained she had spent time "cleaning out the motor home and moving [her] stuff in and trying to protect [herself. She] was sober at that time. [She] was trying to protect [her] stuff from other people around in the camp." Although the motor home had running water and electricity, mother did not think it was suitable for E.S. to live in and, thus, she had been looking into other housing. Both the department and E.S.'s counsel argued mother had failed to meet her burden of showing changed circumstances.

The juvenile court denied mother's section 388 petition. Identifying mother's extensive history with substance abuse and her failure to benefit from the first 12 months of reunification services, the court characterized mother's circumstances as changing due to her working on improving her situation, but they had not changed to the level necessary to grant the petition. Even if the court found changed circumstances, it did

“not believe that it would be in the best interest to move [E.S.] at this time” because she was doing well in K.U.’s home and had bonded with K.U.’s family.

The juvenile court then held the section 366.26 hearing. Mother’s counsel asserted the parent/child relationship exception to termination of parental rights. The juvenile court disagreed, finding the bond between E.S. and mother did not outweigh E.S.’s need for permanency through adoption. The court opined E.S. was excelling in K.U.’s home, she had bonded with K.U.’s family, and K.U. wanted to adopt her. The court therefore terminated mother’s parental rights and selected adoption as the permanent plan.

II. DISCUSSION

Mother contends the juvenile court abused its discretion in denying her section 388 petition requesting the reinstatement of reunification services. She further asserts the court erred by refusing to apply the beneficial parent-child relationship exception to termination of parental rights. We conclude that neither of these contentions has merit.

A. The Juvenile Court Did Not Abuse Its Discretion in Denying the Section 388 Petition.

Section 388 is a general provision permitting the juvenile court, “upon grounds of change of circumstance or new evidence . . . to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court.” (§ 388, subd. (a).) The statute allows the modification of a prior order only when the petitioner establishes by a preponderance of the evidence that (1) changed circumstances or new evidence

exists, and (2) the proposed modification would promote the best interests of the child. (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1193; *In re Y.M.* (2012) 207 Cal.App.4th 892, 919-920.) A parent seeking relief under section 388 “must show *changed*, not changing, circumstances. [Citation.] The change of circumstances or new evidence ‘must be of such significant nature that it requires a setting aside or modification of the challenged prior order.’” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.)

Moreover, “[i]t is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child.” (*In re S.J.* (2008) 167 Cal.App.4th 953, 960.) A parent requesting an order for reunification services after they have been terminated has the burden of proving that the benefit to the child of reinstating services outweighs the benefit the child would derive from the stability of a permanent placement. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.) We review a juvenile court’s ruling on a section 388 petition for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

In this case, the juvenile court did not abuse its discretion in denying mother’s section 388 petition. Mother had an extensive history of substance abuse and child welfare referrals dating back to 1996. E.S. and mother were living in a residence where mother allowed 10 to 12 other people to live with her. These people “appeared to look under the influence of [a] substance.” These findings resulted in E.S.’s detention in January 2017, when she was nine years old. For 12 months following E.S.’s detention, mother refused to participate in family reunification services. By the 12-month review

hearing, she had been residing in a homeless camp, collecting recyclables, and repairing headlights for income. In March 2018, 14 months after E.S.’s detention, mother entered a 90-day residential program to address her substance abuse problem; however, she left the program on May 3, and enrolled in an outpatient program. Mother continued to associate with individuals with substance abuse problems and criminal histories.

By the time of the section 388 hearing, mother had not established the financial means to resume custody of E.S. or the ability to provide a stable and safe home for her. Given her extensive history of substance abuse and repeated relapses, it appeared that mother had achieved a new period of stability, but had yet to demonstrate an ability to maintain sobriety over a significant period of time. As the juvenile court aptly observed, mother’s recent progress in her recovery showed a changing circumstance, but no changed circumstances sufficient to satisfy section 388.

The courts have consistently held that, when long-term drug addiction is the prime reason for a parent’s unfitness and the dependency, it is not enough for the parent to show he or she has started the process of getting sober or that he or she has been sober for a brief period. (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223 [“Appellant’s completion of a drug treatment program, at this late a date, though commendable, is not a substantial change of circumstances.”]; *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 641-642 [given father’s inability to stay sober, his “belated choice to return to treatment is no guarantee that he will achieve or maintain the sobriety required for him to be a parent to [his son]”]; *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081 [the parents’ “recent efforts at rehabilitation were only three months old at the time of the section

366.26 hearing”]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 686-687 [mother’s sober living housing unit did not accommodate children and the waiting time for a unit that would accommodate them was up to 90 days]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424 [father had a “history of drug use dating back to his college days, and since then his periods of sobriety alternated with recurring drug use”]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 48 [parent “had an extensive drug history with a tendency to engage in treatment programs when required to do so by outside agencies and then relapse once the requirement was lifted”].)

Mother also failed to establish the relief she was requesting was in the best interest of E.S. As of December 2018, the child had been living in K.U.’s home for almost two years. She was happy, healthy, and doing exceptionally well in school. She was bonded to her foster family, and they wanted her to be a part of their family. Given mother’s history of relapse, she failed to show the benefit to reinstating reunification services outweighed the benefit E.S. would derive from the stability and security of a permanent home. Under these circumstances, the juvenile court did not abuse its discretion in denying mother’s section 388 petition.

B. The Juvenile Court Did Not Err in Concluding the Beneficial Parent-Child Relationship Exception Did Not Apply.

Mother contends the juvenile court erred by refusing to apply the beneficial parent-child relationship exception to termination of parental rights. We disagree.

The Legislature has designated adoption as the preferred permanent plan when possible. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) If the court finds a dependent

child is likely to be adopted, it must terminate parental rights and select adoption as the permanent plan unless it finds one of several exceptions applies. (§ 366.26, subd. (c)(1); *In re L.Y.L.*, at p. 947.) “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The beneficial parent-child relationship exception requires the trial court to find “a compelling reason for determining that termination would be detrimental to the child” because the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) “[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Courts must examine the beneficial parent-child relationship exception on a case-by-case basis and consider the variables affecting the parent-child bond, including “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*Id.* at p. 576.) The parent bears the burden of showing the exception applies. (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.)

We review the trial court's determination on whether a beneficial parent-child relationship exists for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) We review for abuse of discretion the court's determination on whether the relationship provides a compelling reason for finding termination of parental rights would be detrimental to the child. (*Id.* at p. 1315.) Here, the juvenile court found a bond between mother and E.S., and substantial evidence supports the court's finding. Thus, we focus on whether the court abused its discretion in concluding the parent-child relationship was not a compelling reason to forgo adoption.

Mother has not demonstrated her relationship with E.S. had reached the level at which the exception would apply. Prior to her removal, E.S. had been living with her grandparents and visiting mother once or twice a month. When E.S. stayed with mother, she witnessed domestic violence and substance abuse, and she shared her bedroom with a drug user. By the time of the section 366.26 hearing, E.S. had lived with K.U. for almost two years. During those years, she was doing exceptionally well in her foster family's home, where she received appropriate parenting and structure. There is no evidence E.S. experienced distress from separating from mother. Rather, she became upset in a July 2018 visit at the prospect of returning to mother's care. E.S. was bonded to her foster family, and they provided her with comfort and guidance. In contrast to the volatile life mother had subjected her to, the foster parent provided a stable home. There simply is no evidence E.S. would be greatly harmed by the termination of her natural parent-child relationship with mother. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.)

We therefore conclude the juvenile court properly found the parent-child relationship exception to adoption did not apply.

III. DISPOSITION

The orders denying the section 388 petition and terminating parental rights are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

SLOUGH
J.

MENETREZ
J.